

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSEPH M. RODRIGUEZ,

Plaintiff,

vs.

No. CIV 00-963 JC/KBM

MCKINLEY COUNTY,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for consideration of Plaintiff's Motion to Remand, filed August 25, 2000 (*Doc. 5*). The court has reviewed the motion, the memoranda submitted by the parties, and the relevant authorities. The court finds that Plaintiff's motion is well taken and will be granted.

I. Factual Background

On August 28, 1998, Plaintiff Joseph Rodriguez filed a claim with the New Mexico Human Rights Commission (NMHRC) alleging wrongful termination of his employment as Director of Fire and Safety for McKinley County. Plaintiff's complaint was based on both Title VII of the Civil Rights Act of 1964 and the New Mexico Human Rights Act, NMSA 1978 §28-1-1. After a hearing on October 23, 1999, the NMHRC awarded Plaintiff \$91,464.82 in damages. Defendant McKinley County appealed the decision to the Eleventh Judicial District for the District of New Mexico, pursuant to NMSA 1978 § 28-1-13(A)(permitting a trial *de novo* of decisions by the NMHRC).

During the state court proceedings, the court entered an order directing that the Plaintiff's original EEOC Charge of Discrimination serve as the the written complaint in this matter. *See* Order of Judge Byron Caton, June 9, 2000, CV-99-400-II. Because the complaint contains an allegation that Defendant violated Title VII of the Civil Rights Act of 1964, Defendant removed the case to federal court based on federal question jurisdiction. *See* Notice of Removal, filed July 6, 2000 (*Doc. 1*). Plaintiff now moves the court to remand the action back to state court or for voluntary dismissal under Fed. R. Civ. P. 42.¹

II. Analysis

Under New Mexico law, a "person aggrieved by an order of the [NMHRC]" may appeal to the district court. NMSA 1978, § 28-1-13(A). Review of a decision by the NMHRC by the district court is *de novo*. *See id.* In a *de novo* appeal, it is not relevant whether the Commission based the original award on state law or federal law, as the court will review the case in its entirety. Thus, Defendant McKinley County argues that the case is removable to federal court, as the resolution of the appeal will necessarily require federal law analysis.

However, this court is not vested with original jurisdiction merely because an appeal may concern the interpretation of federal civil rights law. The Human Rights Act clearly contemplates that the appeal of a NMHRC decision be made to the *state* district court. Regardless of whether or not the NMHRC based its award on a finding of civil rights violations, the New Mexico Human Rights

¹In his motion, Plaintiff Rodriguez improperly refers to Rule 1-041, the New Mexico Rule of Civil Procedure for voluntary dismissal.

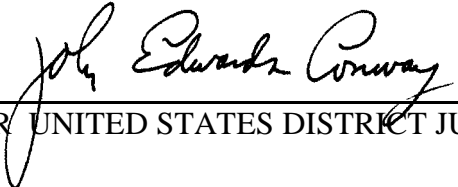
Act is not intended to vest federal courts with jurisdiction to review decisions of the NMHRC. Therefore, this court lacks jurisdiction to review the decision of the NMHRC.

There is some confusion in the case regarding the appropriate alignment of the parties. Upon filing its appeal in state court, McKinley County was named as appellant in that case. When the case was removed to federal court Mr. Rodriguez was named as Plaintiff. Accordingly, Mr. Rodriguez argues that because he has no desire to pursue the case in either federal or state court, the case should be dismissed. However, given that the cause of action was initiated by McKinley County as an appeal, this court is reluctant to dismiss the case altogether. Accordingly, the case will be remanded to state court, whereupon the state will have the opportunity to address Mr. Rodriguez' argument that the County is not a "person" under NMSA 1978, § 28-1-13(A), nor qualified to appeal the decision of the NMHRC.

Wherefore,

IT IS ORDERED that Plaintiff's Motion to Remand (*Doc. 5*) be, and hereby is, **granted**.

DATED May 23, 2001.



SENIOR UNITED STATES DISTRICT JUDGE

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